



Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Medical Assistance Services (DMAS)
Virginia Administrative Code (VAC) citation	12 VAC 30, Chapter 70, Section 221
Regulation title	Methods and Standards for Establishing Payment Rates -- Inpatient Hospital Services
Action title	Clarification to Medicaid Utilization Calculation to Match Cost Report Practice
Document preparation date	

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Preamble

The APA (Section 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

The Administrative Process Act (Section 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires

a regulation to take effect no later than 280 days from its effective date. This suggested emergency regulation meets the standard at COV 2.2-4011(ii).

Item 326 PPP of the 2005 Appropriation Act directed DMAS to undertake this emergency regulation.

Please note: This exact same emergency regulatory change was previously filed, reviewed and approved by both the Office of the Attorney General and the Department of Planning and Budget. The action was withdrawn, however, based upon indications by the federal Centers for Medicare and Medicaid Services (CMS). The Agency has settled the issues with CMS concerning this package without any change to the text of the former regulation. This action is therefore being filed for a second time.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

Item 326 PPP of the 2005 Appropriation Act directed DMAS to clarify the definition of Medicaid Utilization to better articulate the actual practice of calculating Medicaid utilization from the facility cost reports. Medicaid Utilization is primarily used to determine whether or not a facility is eligible for Disproportionate Share Hospital (DSH) payment. The calculation is generally Medicaid inpatient days divided by total inpatient days at any given facility. However, there has been a lack of clarity in regulation regarding what constitutes a “Medicaid inpatient day” for this calculation. Cost report instructions, however, have been clear and consistent in this definition. This regulatory change will better articulate the definition in regulation.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

Substance

Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation

is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

The section of the State Plan for Medical Assistance that is affected by this change is Attachment 4.19-A to Methods and Standards for Establishing Payment Rates-Inpatient Hospital Services (12VAC30-70-221).

DMAS is amending 12VAC30-70-221 to provide clarification regarding what is includable in the definition of Medicaid utilization. Specifically, DMAS is stating that the definition includes all paid Medicaid days and non-paid/denied Medicaid days (to include medically unnecessary days, inappropriate level of care service days, and days that exceed any maximum day limits). DMAS is stating that the definition of Medicaid days does not include any general assistance, Family Access to Medical Insurance Security (FAMIS), State and Local Hospitalization (SLH), charity care, low-income, indigent care, uncompensated care, bad debt, or Medicare dually eligible days. DMAS is also stating that it does not include days for newborns not enrolled in Medicaid during the fiscal year even though the mother was Medicaid eligible during the birth.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-70-221	n/a	Defines Medicaid Utilization	Clarifies the definition of Medicaid Utilization to match the actual practice of the calculation based on cost report guidance

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

This regulation is only codifying current practice to provide clarification to providers regarding what is allowable to report on their facility cost reports. The alternative to this regulatory change would be to continue current practice without this clarification in the Administrative Code. This would continue to foster confusion for cost reporting and would continue to cause DMAS to expend unnecessary resources on questions that arise out of this provider confusion.

Family impact

Please assess the impact of the emergency regulatory action on the institution of the family and family stability.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents. It does not strengthen or erode the marital commitment, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.